

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES J. NICOSIA,

Plaintiff,

-against-

ORDER
18-CV-7305 (JS) (GRB)

SUFFOLK COUNTY CORRECTIONAL
FACILITY RIVERHEAD,

Defendant.

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APPEARANCES:

For Plaintiff: James J. Nicosia, pro se
631173
Suffolk County Correctional Facility
110 Center Drive
Riverhead, NY 11901

For Defendant: No appearance

SEYBERT, District Judge:

On December 21, 2018, incarcerated pro se plaintiff James J. Nicosia ("Plaintiff") filed a Complaint in this Court together with an application to proceed in forma pauperis. Upon review of the declarations in support of the application to proceed in forma pauperis, the Court finds that Plaintiff is qualified by his financial status to commence this action without prepayment of the filing fee. Accordingly, Plaintiff's application to proceed in forma pauperis is GRANTED.

Pursuant to the Court's January 23, 2012 Order of Consolidation in Butler, et al. v. DeMarco, et al., No. 11-CV-2602 (JS) (GRB) (the "Consolidated Action"), the Court has reviewed the

instant Complaint and finds that it relates to the subject matter of the Consolidated Action. (See Order of Consol., Consol. Action Docket Entry 327.) Accordingly, this action shall be consolidated with the Consolidated Action. This affects Plaintiff in the following ways:

1. Plaintiff in this action shall become a member of the certified classes in Butler (11-CV-2602);¹

¹The classes are defined as follows:

(1) [A]n Injunctive Class comprised of all persons who, now or at any time in the future, are or will be detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in the SCCF [Suffolk County Correctional Facility], with separate subclasses for those persons detained in Riverhead and Yaphank; and

(2) [A] Damages Class comprised of all persons who are or were detainees or prisoners in the custody of the Suffolk County Sheriff's Department and housed in the SCCF and who were or will be released from the SCCF on or after April 5, 2009, with separate subclasses for those persons detained in Riverhead and Yaphank.

(See Aug. 29, 2016 Order, Consol. Action Docket Entry 428, at 2-3.)

On August 29, 2016, this Court in the Consolidated Action adopted Magistrate Judge Gary R. Brown's Report and Recommendation and granted the Defendants' cross motion to amend the class definitions to "exclude all Suffolk County Correctional Facility inmates 'who were or have been housed exclusively at the new jail facility in Yaphank, New York.'" (Aug. 29, 2016 Order at 3-5.)

2. Any claims in the instant Complaint that are not included in the Consolidated Amended Complaint in Butler shall be severed (see Order of Consol. at 17 (describing the process for proceeding with any severed claims after the resolution of the Consolidated Action)); and
3. Plaintiff, as a member of the class, shall be represented by pro bono counsel, Shearman & Sterling LLP.²

A copy of the Order of Consolidation and the operative complaint in Butler--the Consolidated Amended Complaint (Consol. Am. Compl., Consol. Action Docket Entry 334)--are annexed to this Order.

If Plaintiff does not wish to proceed as a member of the Consolidated Action, he must so indicate in a letter to the Court within thirty (30) days of receiving a copy of this Order. Upon receipt of such a letter, the Court will direct the Clerk of the Court to sever this Complaint from the Consolidated Amended Complaint and reopen and reinstate his individual pro se action.

For the foregoing reasons, Plaintiff's application to proceed in forma pauperis is GRANTED and the Clerk of the Court is directed to CONSOLIDATE this matter with Butler, et al. v. DeMarco,

² Counsel's mailing address is:

Daniel Hector Rees LaGuardia, Esq.
Shearman & Sterling
599 Lexington Avenue
New York, NY 10022

Counsel's telephone number is: (212)848-4000.

et al., No. 11-CV-2602; to mail a copy of this Order, the Order of Consolidation, and the Consolidated Amended Complaint to Plaintiff at his last known address; and to mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: January 10, 2019
Central Islip, New York